

REMARKS

Claims 1-21 are currently pending in the application. Claims 1-9, 11-13 and 21 are amended. Claim 10 is cancelled by Applicant without prejudice. The amendments find support in the specification and originally filed claims, and are designed to more clearly point out the claimed invention. No new matter is added.

Election

In response to the restriction requirement set forth in the Office Action mailed December 16, 2008, Applicant hereby provisionally **elects Group I**, claims 1, 4-7, 9, 14 and 21, for continued examination, **with traverse**.

The Examiner indicates the restriction requirement is proper under PCT Rule 13.1, since the inventions listed as Groups 1-10 do not relate to a single general inventive concept, because under PCT Rule 13.2, they lack the same or corresponding special technical features, e.g., the nucleic acid of Group 1 and Group 2, do not share the same structure or function.

Applicant's traversal is based on the contention that it would not be an undue search burden to examine the claims of Groups 1, 4, 5, and 9. Groups 1, 4, 5, and 9 are drawn to a nucleic acid encoding the polypeptide of SEQ ID NO:2 (the novel photoprotein mtClytin, isolated from the jellyfish *Clytia gregaria*), the polypeptide of SEQ ID NO:2, a method for isolating the polypeptide of SEQ ID NO:2, and the use of polypeptide of SEQ ID NO:2, respectively. Because the claims encompassed by Groups 1, 4, 5, and 9 all are drawn to a single inventive concept revolving around the novel polypeptide mtClytin, a search of the claims of Group 1 will overlap a search of the claims of Groups 4, 5 and 9. Further, a search of the elected group will necessarily encompass a search of the nucleic acid sequence of SEQ ID NO:3 recited in the claims of Groups 2 and 10, which encodes mtClytin with a signal sequence peptide. Further, in assessing lack of unity in PCT/EP2004/009843, the PCT application of which this is a national phase application, the International Searching Authority provided that the subject matter of the claims of Groups 2, 4, 5, 9 and 10, above, constituted a single group. Accordingly, consideration of a rejoinder of Groups 2, 4, 5, 9 and 10, with elected Group 1, is respectfully requested.

A petition for an extension of time and associated fee is enclosed herewith. Please charge any necessary fees required in connection with the paper transmitted herewith to Deposit Account No. 04-1105, Reference No.: 83313(303989).

Conclusion

Applicant submits that all claims are allowable as written and respectfully request early favorable action by the Examiner. If the Examiner believes that a telephone conversation with Applicant's attorney/agent would expedite prosecution of this application, the Examiner is cordially invited to call the undersigned attorney/agent of record.

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Respectfully submitted,

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